



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 3, 1992

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Legal Affairs Division  
Texas Department of Criminal Justice  
P. O. Box 99  
Huntsville, Texas 77342-0099

OR92-532

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16791.

You have received a request for copies of ten internal affairs investigations of the Texas Department of Criminal Justice Institutional Division (the "division") relating to a particular inmate. You advise us that you do not object to release of some of the requested information.<sup>1</sup> You have submitted to us for review, however, nine of the requested investigation files and claim that some of the information contained therein is excepted from required public disclosure by sections 3(a)(1), 3(a)(8), and 3(a)(11) of the Open Records Act.

You claim that information contained in Internal Affairs Division report numbers HR.15.119.84 (Attachment B), HR.15.0912.85.GR (Attachment E), HR.14.1195.86.GR (Attachment G), and HR.05.0001.90.GR (Attachment J) that reflects polygraph examination results is protected by third party privacy interests, and is thus excepted from required public disclosure by section 3(a)(1), which excepts "information deemed confidential by law, either Constitutional, statutory, or

---

<sup>1</sup>You also claim that some of the requested information, e.g., polygraph reports and information made confidential under the *Stipulated Modification to the Ruiz Amended Decree*, are clearly made confidential by law, and you do not request our opinion with respect to this information. Accordingly, we will limit the scope of this ruling to attachments B, D, E, F, G, and J, for which you assert exceptions under section 3(a) of the Open Records Act.

by judicial decision." Section 19A of the Polygraph Examiner's Act, article 4413(29cc), provides in part:

(b) Except as provided in Subsection (d) of this section, a person for whom a polygraph examination is conducted or an employee of the person may not disclose to another person information acquired from the examination.

V.T.C.S. art. 4413 (29cc), § 19A.

We are advised that the polygraph information in issue here relates to examinations conducted for the department. We do not understand any of the exceptions to non-disclosure to apply in this instance. *See id.* § 19(c), (d). Accordingly, information in attachments B, E, G, and J that reflect polygraph examination results must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act.

You claim that some information contained in report numbers CC.14.0420.85.GR (Attachment D) and HR.05.0001.90.GR (Attachment J) and all of report number SC.14.0381.86.GR (Attachment F) are excepted from required public disclosure by section 3(a)(8), which excepts

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

When the "law enforcement" exception is claimed as a basis for excluding information from public view, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)); *see also* Open Records Decision No. 413 (1984) (Department of Corrections is a "law enforcement" agency within the meaning of section 3(a)(8)).

We have examined the documents submitted to us for review. We conclude that release of the information in attachments D, J, and F for which you assert section 3(a)(8) protection would undermine a legitimate law enforcement interest.

Accordingly, the marked information in attachments D and J and Attachment F, in its entirety, may be withheld from required public disclosure under section 3(a)(8) of the Open Records Act.

Finally, you claim that some of the information contained in report numbers HR.15.0912.85.GR (Attachment E) and HR.14.1195.86GR (Attachment G) by section 3(a)(11) of the Open Records Act. Section 3(a)(11) excepts from public disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." The purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the decisional process within an agency or between agencies. This is intended to encourage open and frank discussion in the deliberative process. *See, e.g., Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision Nos. 538 (1990); 470 (1987). Purely factual information, however, does not constitute advice, opinion, or recommendation and may not be withheld under section 3(a)(11). Open Records Decision No. 450 (1986).

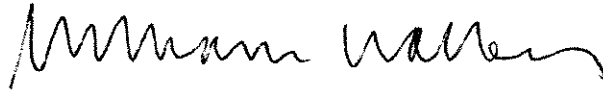
We have examined attachments E and G. Some of the information contained therein for which you assert the section 3(a)(11) exception does contain advice, opinion, or recommendation and may thus be withheld from required public disclosure under section 3(a)(11) of the Open Records Act. Information, however, which constitutes merely factual information has been marked and must be released. Moreover, all other information contained in attachments E and G that is not excepted under section 3(a)(11) of the Open Records Act must be released.

In summary, information in Attachment B that reflects polygraph examination results must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act; the remainder of Attachment B must be released. You may withhold all information in Attachment D for which you claim the section 3(a)(8) exception; the remaining information must be released. You may withhold all information in Attachment E, unless we have marked it, for which you claim the section 3(a)(11) exception. You must withhold information in Attachment E which reflects polygraph examination results; the remaining information must be released. Attachment F may be withheld in its entirety under section 3(a)(8). You may withhold all information in Attachment G for which you claim the section 3(a)(11) exception. You must withhold information in Attachment G which reflects polygraph test results; the remaining information must be released. You may withhold all information in Attachment J for which you claim the section 3(a)(8)

exception. You must withhold information in Attachment J which reflects polygraph examination results; the remaining information must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-532.

Yours very truly,

A handwritten signature in black ink, appearing to read "William Walker", with a stylized, cursive script.

William Walker  
Assistant Attorney General  
Opinion Committee

WW/GCK/lmm

Ref.: ID# 16791  
ID# 17008  
ID# 17023

cc: Mr. Michael E. Schneider  
TDCJ # 296468  
Ramsey I Unit  
Route Four, Box 1100  
Rosharon, Texas 77583-8817